HONOURABLE SRI JUSTICE GODA RAGHURAM

WRIT PETITION No. 3715 of 2007

DATED: 26-02-2007

Between:

Smt Ch.Sandhya Rani

…Petitioner

and

District Collector (CS),
Nalgonda and others

…Respondents.

HON'BLE SRI JUSTICE GODA RAGHURAM

W.P.No. 3715 of 2007

ORAL ORDER:

By the notification issued by the 2nd respondent dated 7-2-2007, applications are invited for filling up an existing vacancy of Huzurnagar 17th Ward Fair Price Shop in Miryalguda Division, Huzurnagar Mandal, setting out the schedule for submission of applications and conduct of interviews for the purpose notified.

The petitioner applied for a dealership in kerosene and was granted one on 13-10-1992 to operate in Huzurnagar, Nalgonda District. Since then she has been pursuing this dealership. A vacancy for the Fair Price Shop dealership in Ward No.17 of Huzurnagar having arisen, the petitioner applied for the same. She was appointed temporarily as a Fair Price Shop dealer on 5-3-2004 and ever since has been continuing as the temporary Fair Price Shop dealer in Ward No.17, Huzurnagar.

It would appear that pursuant to recommendations by a group of Ministers during the meeting held in the Chambers of the Honourable Chief Minister on 15-1-2005, a decision was taken regarding conversion of the existing nominated retailers as Fair Price Shop dealers in a phased manner to make available all essential commodities to the cardholders under one roof. Consequent on this, the Commissioner of Civil Supplies issued a circular dated 19-3-2005,directing all the Collectors/Chief Rationing Officer, Hyderabad to take necessary steps for conversion of the existing nominated retailers as Fair Price Shop dealers in a phased manner and report

compliance.

The petitioner built up an expectation of regularization of her temporary Fair Price Shop authorization in Ward No.17, Huzurnagar, on the basis of the Commissioner of Civil Supply's circular dated 19-3-2005 and in view of the impugned notification calling for application for the vacant Fair Price Shop in Ward No.17, Huzurnagar, her expectation based on the Commissioner's circular dated 19-3-2005 has been belied and therefore, this writ petition.

It would appear that the Mandal Revenue Officer, the 3rd respondent had also recommended the candidature of the petitioner for appointment as a Fair Price Shop dealer on a permanent basis, by his letter dated 24-1-2006 addressed to the 1st respondent.

The grant of authorization to operate a Fair Price Shop is governed by the provisions of the Andhra Pradesh State Public Distribution System Control Order, 2001 (for short 'the Control order'), issued in G.O.Ms.No.16, Food, Civil Supplies and Consumer Affairs (CS-I), dated 6-4-2002. This Control order is issued in purported exercise of the power under Section 3 of the Essential Commodities Act, 1955 and in terms of the order of Government of India, Ministry of Consumer Affairs, Food and Public Distribution GSR No. 630(E), dated 31-8-2001. This regulatory regime is thus under the provisions of a Federal legislation. Clause 5 of the Control order ordains that the appointing authority may issue authorization to fair price shops owned by the State Government or any State Government undertaking or any public institution or persons including women or Development of Women and Children in Rural Areas group (DWCRA) or registered Women voluntary consumer organizations or thrift groups like Podupu Lakshmi or Co-operative Societies which are run exclusively by women (which have only women as members) either wholly or partly, subject to such preferences and reservations as may be prescribed by Government from time to time in this regard to obtain and supply scheduled commodities in accordance with the provisions of this order.

Since the grant of an authorization tantamounts to grant of a largesse by the State, the State is required to follow fair and equitable procedures for grant of authorization clearly specifying the persons who are eligible, the preferences if any that the State intends to confer on certain class or group of persons or individuals and prescribe a proper procedure which ensures equitable opportunity and access to such largesse, after a due notification. Conversion of an existing temporary fair price shop authorization into a permanent authorization would subvert this obligated procedure of the Municipalities, in the matter of granting such largesse. Notwithstanding the purported recommendation by group of Ministers or a circular issued by the Commissioner of Civil Supplies, the mandate of the control order and the mandate of the equality injunctions of the Constitution which ordain the following of a fair procedure cannot be bypassed. The impugned notification issued by the 2nd respondent (dated 7-2-2007) effectuates the purposes of the control order and also ensures equitable opportunity in the matter grant of authorization.

No principle of law is invoked to interdict the lawful exercise of jurisdiction, authority and following the due procedure by the 2nd respondent, warranting grant of relief in this writ petition.

On the analysis above, the writ petition is misconceived and is accordingly dismissed at the stage of admission, after hearing the learned Government Pleader for Civil Supplies also. Nothing in this order shall debar the petitioner from responding to the impugned notification issued by the 2nd respondent, if she is otherwise eligible and qualified and if she is so applies. There shall be no order as to costs.

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GODA RAGHURAM, J

26-02-2007
GRR